

second paragraph, claims 1, 7, 8 and 10 have been amended as suggested by the Examiner. In addition, other minor informalities in the claims have been corrected for the purposes of clarity, for example the term "it" in claims 3 and 9, and conforming claim 5 to the amendment in claim 1. No new matter has been added by these amendments, and entry is respectfully requested.

The Examiner has provisionally rejected claims 1-10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of co-pending application No. 09/244,184 in view of four prior art references. While not necessarily agreeing with the Examiner's rejection on this ground or the arguments of the Examiner in support of this rejection, the parent application No. 09/244,184 (but not the subject matter thereof, as described and claimed herein) is being allowed to go abandoned for failure to respond to the outstanding Office Action. Accordingly, this rejection is rendered moot.

The Examiner has rejected claims 1, 3-8 and 10 under 35 U.S.C. 103(a) as being unpatentable over EP 0 408 164 A2 of Ito, et al. in view of U.S. Patent 5,382,391 of Juhl, et al. and U.S. Patent 5,698,278 of Vicik. The Examiner contends that Ito, et al. teach a food barrier casing wherein the casing comprises at least one gas impermeable foil, an inner absorbent layer selected from individual fibers, woven fibers, fabric, knits and fleece joined to the inner side of the impermeable foil and impregnated with coloring and/or flavoring agents, as claimed in claim 1. The Examiner further contends that Ito, et al. teach that the absorbent inner layer forms a laminate with the casing, wherein the outer side of the casing comprises at least one tight plastic foil joined together so as to be flat for the purpose of providing a strong casing for foods, such as sausage wherein the casing is impregnated with flavoring, so that the overall processing of the foodstuff will be simplified by the cooking and spicing steps.

The Examiner acknowledges that Ito, et al. fail to teach a casing which comprises at least one steam and/or gas impermeable foil (claim 1), wherein the casing comprises a shrink foil (claim 3), wherein the inner layer is joined with the adjacent layer of the casing by an adhesive (claim 5), the adhesive comprising extruded polyethylene (claim 6), the foil being selected from polyethylene and polyamide foil (claim 7), and the casing comprising two polyethylene foils and a polyamide foil between them (claim 8). However, the Examiner contends that Juhl, et al. teach an extruded multilayer blend of thermoplastics comprising an oxygen barrier type foil, wherein the casing comprises a shrink foil and is joined with the adjacent layer of the casing by an adhesive, the foil selected from polyethylene and polyamide

and being a multilayer foil consisting of 1-5 layers including polyethylene foils and polyamide between them, and wherein the inner film lining absorbs a flavor or colorant modifier for providing the oxygen barrier casing with an inner layer modifier which can be transferred directly to the foodstuff contained in the casing.

The Examiner argues that one skilled in the art would expect a multilayer heat-shrinkable thermoplastic comprising polyethylene and polyamide to have a heat temperature in the range of 70-90°C (claim 3), that it is known to one skilled in the art that extruded polyethylene functions as an adhesive layer and a barrier layer in the production of multilayer films in place of the vinylidene chloride copolymer of Juhl, et al. (claim 6); and that one skilled in the art would be knowledgeable of the use of polyethylene for extrusion lamination as a hot melt adhesive providing bonding between the layers in contact with the adhesive layer (claim 8). The Examiner further contends that Vicik teaches a food casing comprising an extruded multilayer heat shrinkable film, wherein it is known to provide a casing comprising at least one steam and/or gas impermeable foil.

The Examiner concludes that it would have been obvious to one skilled in the art to modify the casing of Ito, et al. to comprise at least one steam and/or gas impermeable foil comprising a foil shrinking at a temperature of about 70-90°C, where the inner layer is joined with the adjacent layer of the casing by an adhesive comprising extruded polyethylene, wherein the casing comprises two polyethylene foils and a polyamide foil between them, as per the teachings of Juhl, et al. and Vicik in order to provide a strong, tight-fitting casing which preserves the enclosed food and simplifies the cooking and spicing steps by combining flavoring and coloring modifiers with the absorbent inner lining. This rejection is respectfully but strenuously traversed for the reasons set forth in detail below.

Ito, et al. disclose a food transfer sheet comprising a water-resistant matrix web 1 and a food material layer 3 having a size (adhesive) layer 2 interposed between the matrix web 1 and the food material layer 3, as shown in Figure 1. The food material layer can be a spice or flavoring for foods such as ham, sausages, etc., and the adhesive (size) layer is water-soluble to allow weakening of the bond between the food material and matrix web by processing moisture to allow the spice or flavoring to be transferred onto the surface of the substrate or filling food (page 3, lines 22-28).

Ito, et al. have no fibrous, absorbent inner layer impregnated with coloring and/or

flavoring agents. Although the water-resistant matrix web 1 of Ito, et al. may be made of fibrous materials (page 2, lines 36-44), this is not the inner layer, but the outer layer. Moreover, there is no teaching that this layer is absorbent. Instead, it is water-resistant and must be so in order to protect the food material against bacterial growth. Thus, the food material is applied in a dry state to the adhesive solution on the matrix web and is then dried under forced drying conditions. If the matrix layer were absorbent, it would absorb moisture from the atmosphere during transport and storage prior to cooking, and this would allow bacterial growth which would destroy the food material before cooking. When the transfer sheet is brought into contact with a wet substrate food, the food material (spice or flavoring) is transferred from the matrix to the substrate food by weakening or dissolving the sizing agent layer (page 4, lines 5-9).

Juhl, et al. disclose a thermoplastic casing formed of an extruded multilayer film including a core barrier layer and a blend second layer adhered to the inside surface of the core layer. This second layer comprises a polyolefin with a polyethylene oxide modifier blended with a wood-derived liquid smoke, which provides color and flavor for transferring from the multilayer film to a contiguous food product within the casing in the presence of surrounding heated water (column 3, lines 55-65). While this blend is said to be absorbent (column 5, lines 26-37), this layer is not a fibrous, absorbing layer, but rather an extruded film. Vicik discloses a multilayer, heat-shrinkable film for forming food casings. All of the layers of Vicik are plastic films. There is no teaching in Vicik of a fibrous, absorbing layer, as presently claimed.

In order to make a proper obviousness rejection under 35 U.S.C. 103 using a combination of references, the Examiner must show that all of the features of the rejected claims are taught by the combination of references, and that there is some motivation in the references themselves to combine the references as proposed. Here, the Examiner has failed to make out a *prima facie* case of obviousness on both scores. Thus, none of the references teaches a fibrous, absorbent, inner layer. Moreover, the Examiner has pointed to no teaching or motivation in the prior art references to make the proposed combination. In fact, the Examiner has not even explained how the references would be combined to reach the presently claimed invention. Accordingly, the rejection is improper and should be withdrawn.

The Examiner has rejected claim 2 under 35 U.S.C. 103(a) as unpatentable over Ito, et al. in view of Juhl, et al. and Vicik as applied above, and further in view of U.S. Patent 5,043,194 of Siebrecht, et al. The Examiner acknowledges that Ito, et al. in view of Juhl, et al.

fail to teach that the inner layer comprises fibers selected from the group consisting of cotton fibers, cellulose fibers, regenerated cellulose fibers and mixtures thereof. However, the Examiner contends that Siebrecht, et al. teach a tubular packaging casing which contains an inner cellulose layer for the purpose of enclosing a food product. The Examiner concludes that it would have been obvious to one skilled in the art to modify the foodstuff casings of Ito, et al., such that the inner lining comprises a fiber material selected from the claimed group, as per the teachings of Juhl, et al., Vicik and Siebrecht, et al. in order to securely enclose a food product in a known casing material. This rejection is respectfully but strenuously traversed for the reasons set forth in detail below.

The casing of Siebrecht, et al. is of the type used for long-keeping sausages or sausages of the salami type, wherein the casing is removed before eating, usually without cooking. The entire casing of Siebrecht, et al. is porous or absorbing, and there is no suggestion of impregnating any layer with coloring and/or flavoring agents. In fact, such would not be effective, since they would be washed out upon exposure to water.

Moreover, there is no suggestion in the combined prior art references for combining Siebrecht, et al. with the remaining three references, and the Examiner has not described how such a combination would be made. Accordingly, this rejection is also improper and should be withdrawn. Reconsideration and withdrawal are respectfully requested.

Claim 9 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Ito, et al. in view of Juhl, et al. and Vicik, as applied above, and further in view of U.S. Patent 4,861,632 of Caggiano. The Examiner acknowledges that Ito, et al. in view of Juhl, et al. and Vicik fail to teach a casing in the shape of a bag and an excess length at its open end, wherein the excess length is made without an absorbent inner layer and comprises a heat-sealable plastic foil. However, the Examiner contends that Juhl, et al. teach a casing having the shape of a bag, wherein lengths of foil are heat sealed to each other at the top end and/or edges for the purpose of producing a sturdy and tightly sealed bag which is easy to manufacture and will not experience leakage.

The Examiner further contends that Caggiano teaches a laminated bag wherein the peripheral edges of the outer and inner sheets extend beyond the absorbent layer, and the extended lengths of foil are heat sealed to each for the purpose of providing a sturdy seal enclosing the absorbent layer along with the products to be kept dry therein. The Examiner

concludes that it would have been obvious to one skilled in the art to modify the casings of Ito, et al. as claimed in claim 9, as per the teachings of Juhl, et al., Vicik and Caggiano, in order to produce a sturdy and tightly sealed bag which is easy to manufacture, will not experience leakage and encloses the absorbent layer and products to be kept dry therein. This rejection is also respectfully but strenuously traversed for the reasons set forth in detail below.

Caggiano teaches a laminated bag having a middle layer 4 of absorbent material, such as paper toweling, sealed between adhesively or heat sealed sheets, to maintain products in a dry condition. The absorbent material is not the inner layer which contacts the products. Moreover, the absorbent layer is intended to absorb moisture, not give off flavorings and/or colorings to the contained product. There is no suggestion for combining Caggiano with the remaining three references, and Caggiano does not make up for the deficiencies of the remaining references as discussed above. Accordingly, this rejection is also improper, and reconsideration and withdrawal are respectfully requested.

In view of the above amendments, it is submitted that the specification and claims are in full compliance with 35 U.S.C. 112, as well as the cited 37 C.F.R. and M.P.E.P. sections. In addition, in view of the above arguments, it is submitted that the claims patentably distinguish over the prior art relied upon by the Examiner. Accordingly, reconsideration and withdrawal of the rejections and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

EKKEHARDT SCHÄFER, ET AL.

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